In the various use of its power to establish naturalization laws, Congress has in various statutes set up rules that are impossible to apply uniformly. If the phrase "free white" meant European, many aliens now eligible for naturalization would be excluded; yet the earliest statute[19] containing this term probably had only such aliens in mind.[20] If the phrase means Caucasian, as many opinions consider it does, then such European races as the Basques, Finns, and Magyars will be excluded.[21] If a broader interpretation is used to include all Aryans, some races of low mentality and not white in fact will be admissible to citizenship.[22]

Admission to citizenship is not a right but a privilege which may mature into a right upon strict compliance with naturalization statutes set up by Congress.[23] Since such statutes are extremely difficult, if not impossible, to administer uniformly and invariably, it is submitted that opportunity is now offered for admission to citizenship of many persons of doubtful value to the nation, while many of education and worth may not be admitted.

R. L. H. Jr.

ASSIGNMENT: APPLICATION OF THIRD PARTY BENEFICIARY DOCTRINE—Under the old common law the doctrine of privity prevailed and only those persons in privity with a contract could maintain an action upon it. Because of the presence of this outworn doctrine, no such thing as a third party beneficiary doctrine could exist, but the common law has gradually been influenced by equity and by the law merchant, until today the third party beneficiary doctrine is recognized to some extent in England in at least two somewhat analogous situations, namely, the trust and agency relation.[1] In order to avoid very unfortunate decisions defeating a third party's right to sue on a contract made for his benefit, the doctrine of trusts is greatly strained by the English courts, but as yet they will not definitely recognize the third party beneficiary doctrine.[2] The great weight of authority in the United States not only recognizes the doctrine but is gradually expanding it more

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[19] Act of Mar. 26, 1790, 1 U. S. Stats. at L. 103.

[20] Ex parte Shahid, supra, n. 17.

[21] Racially and culturally the Basques, Finns and Magyars are not to be differentiated from the Indo-European group. But if a philological criterion be applied these stocks would be obviously excluded from the "Caucasian" races. See Ex parte Dow (1914) 211 Fed. 486, 488.

[22] Cf. the interesting discussion in In re Mozumdar, supra, n. 15; Ex parte Shahid, supra, n. 17; Ex parte Dow, supra, n. 17; U. S. v. Balsara, supra, n. 16.

[23] U. S. v. Jorgensen (1916) 241 Fed. 412; Ex parte Eberhardt (1921) 270 Fed. 334; In re Tomarchio (1920) 269 Fed. 400.

[1] Cases of agency and trust relations are exceptions to the general English rule that "a person who is not a party to a contract cannot be included in the rights and liabilities which the contract creates." Anson on Contracts, Corbin's ed., p. 325.

[2] 1 Williston on Contracts § 360.

and more.[3] The doctrine has been applied so as to permit an action by a creditor against one who has agreed with a debtor to assume the debt;[4] against the grantee of any property who agreed to assume debts of his grantor as part of the purchase price;[5] against the grantee of a mortgagor by the mortgagee;[6] and against a sub-tenant who promised to pay rent to the landowner.[7] Some states have narrowed the application of the principle slightly,[8] but the general American tendency is to expand it.

In California this doctrine of a third party's right to sue on a contract made for his benefit is recognized,[9] but the doctrine has been somewhat limited, there being required a contract "made expressly for the benefit of a third person." Despite this restriction, however, the Supreme Court has applied the principle broadly, as may be easily seen from a brief review of some of the cases. In cases where there has been an express assumption of the obligation of a contract by a stranger to the original transaction, it has been held that section 1559[10] applies and that such express assumption creates a contract directly for the benefit of the original transacting party not involved in the agreement with the stranger. Such application of the third party doctrine has been made in favor of a broker on mutual promises between persons exchanging land to pay a commission to the broker;[11] of a manufacturer against a sub-vendee on a promise not to sell below a minimum price;[12] of the holder of a note against the vendee of corporate stock from the maker of the note, the promise to pay being part of the consideration;[13] of a creditor of a mining corporation against a vendee of the latter that assumed its debts;[14] of a landlord against a sub-lessee or promissor;[15] and of a mortgagee against a grantee of the mortgagor.[16]

Thus the third party beneficiary doctrine has been applied where there has been an express assumption of obligations. But this is not enough—there has been no such application to cases of assignment of contracts or agreements.

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[3] See 13 C. J. 705, § 815, citing more than 350 cases.

[4] See notes, 25 L. R. A. 257-280; 2 L. R. A. (N. S.) 783.

[5] Montgomery v Dorn (1914) 25 Cal. App. 666, 145 Pac. 148.

[6] Enos v. Sanger (1897) 96 Wis. 150, 70 N. W. 1069, 37 L. R. A. 862; Cockrell v. Poe (1918) 100 Wash. 625, 171 Pac. 522; Gifford v. Corrigan (1889) 117 N. Y. 257, 15 Am. St. Rep. 508. 6 L. R. A. 610.

[7] Brewer v. Dyer (1851) 7 Cush. (Mass.) 337; Foucar v. Holberg (1908) 85 Ark. 59, 107 S. W. 172.

[8] Massachusetts has perhaps retracted to some extent the doctrine of Brewer v. Dyer in its broadest sense. Dunlap v. Bullard (1881) 131 Mass. 161.

[9] Cal. Civ. Code, § 1559. "A contract made expressly for the benefit of a third person, may be enforced by him at any time before the parties thereto rescind it."

[10] Cal. Civ. Code, § 1559.

[11] Lundeen v. Nowlin (1912) 20 Cal. App. 415, 129 Pac. 474.

[12] Ghirardelli Co. v. Hunsicker (1912) 164 Cal. 355, 128 Pac. 1041.

[13] Montgomery v. Dorn, supra, n. 5.

[14] Washer v. Independent Mining Co. (1904) 142 Cal. 702, 76 Pac. 654.

[15] Erickson v. Rhee (1918) 181 Cal. 562, 185 Pac. 847.

[16] Hopkins v. Warner (1895) 109 Cal. 133, 41 Pac. 868.

The California law in regard to the rights of a mortgagee to hold the grantee of the mortgagor is somewhat confused and often misunderstood because of a certain dictum laid down in the case of Hopkins v. Warner[17] to the effect that the assumption of the obligation by the grantee should be implied from the apparent intention of the grantor and grantee as determined by the circumstances of the transaction. As pointed out in a note in a previous number of this REVIEW,[18] this dictum has been repeated a number of times in subsequent mortgage cases but no case has been decided in accord therewith. This is right—the dictum should not be followed in mortgage cases because of the peculiar development of the law in respect to mortgages,[19] but it should apply to all other cases where it is apparent from the transaction that the intention was to benefit a third party.

The question in the case of *Wilson v. Beazley*[20] was whether the vendor under a contract for the sale of land could bring an action for breach of the contract directly against the assignee of the vendee. The Supreme Court held that no action could be maintained and that section 1559 of the Civil Code was not applicable. This decision, while following earlier decisions of cases of assignment,[21] is really inconsistent with the general application of the third party beneficiary doctrine as ascertained from the review of the cases, supra.[22] In the case of Lisenby v. Newton[23] the court said: "Of course, no assignee of the purchaser in an executory contract for the sale of real estate can require the vendor to convey unless the purchase money is paid, but this conditional right to a conveyance is quite a different thing from personal liability to compulsory payment at the suit of the vendor; such liability can result only from some express or implied contract of the assignee, and is not implied from the mere assignment of the original contract . . ." This statement expresses the judgments of our California courts as handed down in the various assignment cases cited above[24] and seems to defeat the contention that these cases should be brought in under the third party beneficiary doctrine. There is a dictum in the principal case, however, to the effect that if the obligations were expressly assumed by the assignee of the vendee, the vendor might have a right of action directly against

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[17] Supra, n. 16.

[18] 8 California Law Review, 447.

[19] 1 Williston on Contracts § 384, gives the general law.

[20] (July 7, 1921) 62 Cal. Dec. 78, 199 Pac. 772.

[21] Lisenby v. Newton (1898) 120 Cal. 571, 52 Pac. 813; Beazley v. Embree (1919) 41 Cal. App. 706, 183 Pac. 298; Robinson v. Rispin (1917) 33 Cal. App. 536, 165 Pac. 979. As pointed out in a note in 8 California Law Review at page 119, the interpretation of the facts of this last case might easily be quarreled with, but accepting the interpretation of the court, the rule there laid down is in entire accord with the general rule applied to assignment cases.

[22] Supra, notes 11-16, inc.

[23] Lisenby v. Newton, supra, n. 20.

[24] Supra, n. 20.

him. This is good—such a statement is entirely consistent with the application of section 1559[25] as seen in the cases cited, supra.[26] But even this is not sufficient because it does not cover the principal case where there was no express assumption of the obligations. If the assignee does not expressly assume the obligations of the assignor it becomes a question of construction whether he impliedly promises to perform the delegated duties. When the courts give sufficient weight to the circumstances from which may be implied an assumption of obligations, without any express words to that effect, and apply the third party beneficiary doctrine to such cases, then it is hoped that they will also include such cases as the principal case and other cases of assignment, where the circumstances are such as to imply an assumption of obligations by the assignee.[27]

I. L. N.

BANKS AND BANKING: ESCHEAT OF UNCLAIMED DEPOSITS—If I should lend you ten dollars, to be repaid on demand, taking no security, and then forget the transaction, it would seem that you might keep the money. If any presumption were to be drawn from these facts, it would probably be that I intended to make you a present. Even though the debt becomes ancient, the community should not be concerned. It is improbable that escheat would be suggested by even the most avaricious legislator. But if your place in this transaction is taken by a bank,[1] we squint at it from a different angle. In spite of legal analysis of the situation, we refuse to look upon a bank as an ordinary debtor.[2] Gradually the idea has been developing that a bank should not be allowed to keep unclaimed deposits.

In California, since 1893, savings banks have been required to report and publish, biennially, a list of all accounts, not less than fifty dollars, in which there has been neither deposit nor withdrawal for a period of more than ten years.[3] In 1897 this requirement was extended to all banks of deposit.[4] In that same year

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[25] Cal. Civ. Code, § 1559.

[26] Supra, notes 11-16, inc.

[27] Dictum laid down in the case of Richmond-Chase Co. v. Schlessinger (1921) 36 Cal. App. Dec. 673. 675, is in accord herewith.

[1] It is, of course, well established that a deposit in a bank is merely a loan, and that it establishes the relation of debtor and creditor between the bank and the depositor. Smith's Cash Store v. First Nat. Bank (1906) 149 Cal. 32, 34, 84 Pac. 663, 5 L. R. A. (N. S.) 870. The Statute of Limitations does not affect this situation, for, if the statute runs at all, it begins to run only upon demand and refusal to pay. Cal. Code Civ. Proc. § 348; Mitchell v. Beckman (1883) 64 Cal. 117, 121, 28 Pac. 110.

[2] "Banking has ceased to be, if it ever was, a matter of private concern only, like the business of a merchant, and for all purposes of legislative regulation and control it may be said to be 'affected with a public interest'." State Savings & Commercial Bank v. Anderson (1913) 165 Cal. 437, 442, 132 Pac. 755, L. R. A. 1915E 675, affirmed in 238 U. S. 611, 35 Sup. Ct. Rep. 792, 59 L. Ed. 1488.

[3] Cal. Stats. 1893, p. 183.

[4] Cal. Stats. 1897, p. 27; Cal. Civ. Code, § 583b.